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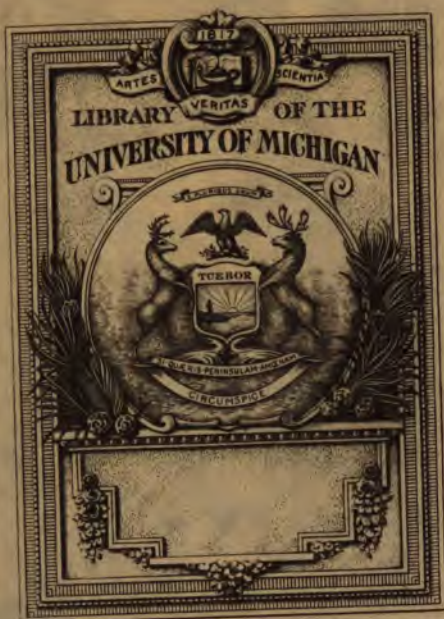
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THE GIFT OF
James H. Russell

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OFFICIAL CONSTRUCTION

OF

ACT 181, P. A. OF 1905



PUBLISHED BY

GEORGE A. PRESCOTT

SECRETARY OF STATE



LANSING, MICH.
WYNKOOP HALLENBECK CRAWFORD CO., STATE PRINTERS
1906

March 8, 1906.

A number of inquiries have been presented to this department relative to the construction to be placed upon the different provisions of Act No. 181 of the Public Acts of 1905 (the general primary election law). It has not been considered advisable to reply to each inquiry separately, but for the purpose of securing uniformity in the operation of the law a general construction has been placed upon the act in which we have attempted to answer the different questions heretofore submitted, and elucidate some of the provisions of the different sections which may not seem entirely clear. There are a number of sections of the act to which we have not expressly referred, as their meaning is apparent. It is not possible to answer, in advance, all the questions which may arise, but this construction is presented at this time, believing that the method of procedure will be more nearly uniform if we express an opinion upon the different provisions prior to the time that steps are taken to make the act effective.

Very respectfully,

JOHN E. BIRD,

Attorney General.

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OFFICIAL CONSTRUCTION OF ACT NO. 181 OF THE PUBLIC ACTS OF 1905.

CHAPTER I.

DIRECT NOMINATIONS.

SECTION 1. (a) When a majority of the qualified voters (which means qualified enrolled voters) of any political party voting at any election held under the provisions of this act, shall vote in favor of direct nomination of candidates for any elective office in such party, the nomination of all such candidates of said party in the respective city, county or district, (State) shall be made by direct vote thereafter until a majority of the qualified (enrolled) electors of such political party voting on said proposition at an election held pursuant to the provisions of this act, shall vote against said proposition when properly resubmitted.

Direct nominations, how decided.

(b) The proposition may be resubmitted and be decided by a majority of the qualified (enrolled) electors voting thereon only at the primary election held in such city, county, legislative or congressional district, on the second Tuesday of June prior to any November election.

When resubmitted.

(c) A primary election at which party candidates shall be elected for county or district offices, to be voted for at the general November election, may be held on the first Tuesday in September prior to the November election.

Primary in counties, etc., when may be held.

(d) Candidates for office, in the different political parties which vote in favor of direct nomination of candidates for city offices, shall be elected at a primary election to be held on the second Tuesday prior to the day designated for the election of city officers.

In cities, when held.

(e) The only exception to the rule, in case the question of direct nomination of candidates for any political party prevails, that party candidates to be voted for at the November election shall be elected at the primary election to be held on the first Tuesday in September, relates to the election of candidates for governor and lieutenant governor. (See sections 5 and 6 of chapter III.)

Exception as to governor and lieutenant governor in 1906.

(f) This section is governing upon the question of the resubmission of the proposition of direct nomination of the State officers named in sections five and six of chapter three.

Resubmission of direct nomination.

(g) The offices referred to in this section are elective offices.

Officers referred to, elective.

"Primary" and "Primary election," meaning of.

SEC. 2. (a) The words "primary" and "primary election" mean the election to be held on the second Tuesday in June, 1906, and which shall be held every second year thereafter; the election which may be held on the first Tuesday in September in 1906 and which may be held every second year thereafter and the election which may be held on the second Tuesday preceding any city election.

Notice of primary, by whom given, etc.

SEC. 3. (a) Notice that a primary election will be held, which shall include the time, place and date, shall be given by the officers, required by law to give notice of registration. (See section 4, chapter IV.)

Officers of election, duties of.

SEC. 4. (a) All officers having duties to perform under the general election law have similar duties to perform under this act, unless the contrary is clearly expressed. The act should be carefully examined by such officers with a view to ascertaining the different duties. (See section 4, chapter IV.)

Expenses of primaries, how defrayed.

(b) All expenses of primaries, regardless of whether the same is incurred by one political party or all political parties, shall be defrayed from the same fund from which are defrayed like expenses of election.

CHAPTER II.

PARTY ENROLLMENT.

When and by whom made.

SECTION 1. (a) The board of election inspectors of the election, to be held on the first Monday of April, 1906, and every second year thereafter, are required to make an enrollment of the names of all persons voting at said election who apply for enrollment as members of any political party. A person is not obliged to vote to be entitled to be enrolled as a member of any political party. Any person who is a qualified voter and entitled to vote, regardless of whether or not he exercises that privilege, is entitled to have his name enrolled. (This construction is upheld by section 4 of this chapter, providing that the proper officer shall enroll the names of such qualified voters of such election district as apply for party enrollment, as hereinbefore provided.)

Enrollment under any party name.

(b) Should the board enroll a person under the name of a political party which, within the knowledge of the board of election inspectors making the enrollment, is not in existence at that time? It would seem reasonable to hold that the board should enroll a person under any name of a party he may give, and that the board has no authority to decide whether he has named a political party in existence, at the time of making the enrollment.

Party enrollment made every second year.

(c) The party enrollment must be made under authority of this section at the time indicated in section 1 every second year, regardless of whether the proposition of direct nomination of candidates of any political party has failed or carried. (See (b) section 5 of this chapter.)

(d) A special election will be held throughout the State on the first Monday in April, 1906. (See Act 325 of the Public Acts of 1905.) Therefore it is the duty of each board of election inspectors to make the party enrollment this year. Enrollment in 1906, duty of inspectors.

SEC. 3. The boards of registration throughout the State have no duties to perform under authority of this chapter this year. Board of registration, no duties in 1906.

SEC. 5. (a) In those election districts in which no election shall be held on the first Monday of April in 1908 and every second year thereafter, the board of registration shall meet on said day and proceed to make a party enrollment of each political party in the manner indicated. Duties in 1908. Enrollment.

(b) The party enrollment provided for after the year 1906 need not be a *new* enrollment in the sense that all electors shall be required to have their names enrolled anew as in the case of the first enrollment. An elector who is properly enrolled in 1906 and continues to be a qualified voter in such voting district, is not required to have his name enrolled again in 1908. Electors not required to enroll in 1908.

(c) During the year 1908 and every second year thereafter the different boards shall correct the prior enrollment and enroll the names of those persons entitled to enrollment. When boards to correct enrollment, etc.

(d) An elector who is enrolled in the year 1906 may change his party affiliation by enrolling with a different party in the year 1908 and every second year thereafter; but an elector who is enrolled on any enrollment day, may not change his party affiliation on the following June or September primary day. Party affiliation, change of.

SEC. 6. This section applies to a party enrollment, whether made by the board of registration or the board of election inspectors. Application of section.

SEC. 7. (a) A person may, upon taking the oath referred to in this section, be enrolled on the date of the primary. This section applies to: Enrollment on primary day.

First. Any person who was a qualified voter in his district on the first Monday of April (although an election may not have been held) and who is a qualified voter in said district at the date of the primary, and who, by reason of sickness or unavoidable absence from the election district, failed to have his name enrolled on the day designated for making the enrollment. In case of sickness, etc.

Second. Any person who becomes twenty-one years of age after the day of enrollment. Becoming of age.

Third. Any person who has changed his place of residence to an election district, other than that in which he was enrolled, or in which he was entitled to be enrolled. In the latter case he must have resided in the election district to which he has lately removed, for a period of twenty days and present his certificate from a member of the election board in the district in which he formerly resided stating that he was duly enrolled; that he has changed his residence therefrom, and that he is entitled to enrollment. Change of residence, etc.

Not enrolled
in former dis-
trict on ac-
count of sick-
ness.

Enrollment
blank, form,
use, etc.

(b) Under the third subdivision of this section, if a person who was not enrolled in the district in which he formerly resided, owing to sickness or unavoidable absence from the election district, makes oath to such fact and is otherwise qualified, he will be entitled to have his name enrolled.

(c) We have been presented with a blank prepared evidently for the purpose of assisting in taking the party enrollment, and have been asked if there is any objection to the use of same. This blank is as follows:

"Application for Primary Election Enrollment.

Name

P. O. Address.....

Street No. (if in City).....

Nativity Age.....

Party Affiliation—Republican."

Enrollment,
when must be
completed.

We have found no provision in the statute which expressly prohibits the use of such blank. There is no authority for the printing of same. The law must be construed to mean that personal application for enrollment shall be made to the enrolling clerk. Furthermore, the enrollment *must be completed* on election day, before the adjournment of the board. If a blank is prepared which, when properly filled out, will furnish the information required by statute and the person desiring to be enrolled *personally* presents it to the enrolling clerk, undoubtedly such clerk would be warranted in taking the answers from the blank instead of receiving verbal answers from the applicant. However, if such a blank is used, it will be the duty of the enrolling clerk to receive same *personally from the applicant*; to see that the applicant has properly answered all questions before accepting same; and to *complete the enrollment* of each elector's name in the order in which they apply. *These restrictions should be printed on the blank for the information of the applicant for enrollment and the enrolling officer.*

CHAPTER III.

FIRST STEP IN SUBMISSION OF PROPOSITION.

Petition of
twenty per
cent neces-
sary.

SECTION 1. (a) The petition referred to in this section must be signed by a number of enrolled electors constituting at least twenty per cent of the total number of votes cast for the candidate of the particular political party for Governor, in such city, county or district, at the last preceding November election.

Exception as
to governor
and lieutenant
governor.

(b) Except during the year 1906, the provision of this section applies in case of the submission of the question of direct nomination of candidates for the State offices named in section 5, chapter III.

(c) The necessary number of signatures may be secured from any part or portion of any division of such city, county or district. Signatures, where secured.

(d) We know of no provision of law which expressly prohibits circulating a petition to obtain the necessary signatures of enrolled electors to submit the proposition of direct nominations, or to obtain the necessary signatures of enrolled electors on nomination papers, in the room where the enrollment is made or the general spring election is held. In case the circulation of the petition interferes with the rights of voters or those persons conducting the election, or the privilege is abused, the respective boards of election inspectors have authority under the general election law to stop the practice and enforce obedience to their lawful commands. May be secured at polls.
Power of inspectors.

SEC. 3. (a) The provision that the petition shall embrace a single object means that a petition to submit the question of direct nomination of candidates for county offices cannot include the question of the submission of the direct nomination of a representative in congress or a representative in the State legislature. Petition to embrace single object.

(b) The blank forms prescribed in this section should be followed.

(c) The respective clerks are required to have printed and keep on hand the forms for such primary petitions. (See last clause in section 2, chapter V.) Clerks to keep petition blanks.

SEC. 4. (a) The different clerks and the secretary of state are given authority to find that the requisite number of qualified voters in the respective city, county or district has signed the petition. This fact must be ascertained by resorting to the party enrollment in the hands of the different clerks and secretary of state forwarded to them under authority of section 2 of chapter II, and to the vote cast for the candidate of the particular political party for governor. Number of qualified voters, how ascertained.

(b) Great care should be taken to have the petition contain the necessary twenty per cent, for unless the respective clerks and the secretary of state shall find this to be true, the question of direct nomination of party candidates cannot be submitted. Petition must contain twenty per cent.

(c) There does not appear to be any provision requiring the respective clerks or the secretary of state to notify the interested parties in case they find that the necessary number of signatures are not attached to the petition and that there has not been a compliance with the statute. The better practice, however, would be for these officers, in such cases, to immediately notify the interested parties that the petition does not conform to the requirements of the statute in order that further action may be taken. Notification of shortage of signatures.

(d) The board of election commissioners in such city or county, or in each of the counties in the district, as the case Ballots by whom prepared.

Form must be followed.

Separation of each proposition by line on ballot.

Arrangement.

Canvass and returns.

Nomination of governor and lieutenant governor in June, 1906.

Ballots, by whom prepared.

Majority required for nomination.

Direct nomination may be resubmitted.

Plurality and forty per cent necessary to nominate.

may be, are required to prepare the necessary ballot for use of all political parties in the submission of this question.

(e) The form of ballot indicated in this section must be followed.

(f) This section also provides that a *separate line shall be printed on said ballot to enable each proposition petitioned for to be voted on by itself*. Accordingly if the board of election commissioners of any county is required to prepare ballots for use of a political party voting upon the question of direct nomination of candidates for county offices and the same party is to vote upon the question of direct nomination of candidates for district offices, in which district that county is included, the different propositions may be printed upon one ballot, each proposition to be separated by a line. The arrangement of the ballot in such case or the settlement of which proposition shall appear first on the ballot, seems to have been left to the discretion of the board of election commissioners.

(g) The votes cast at such primary election are to be canvassed and the returns made in the same manner that is provided for the canvassing of votes and making returns at any general election. (See (a), section 11, chapter V.)

SEC. 5. (a) The question of nominating candidates for the offices of governor and lieutenant governor shall be submitted to the enrolled voters of each political party at the primary election required to be held throughout the State on the second Tuesday of June, 1906. In this case, however, the petition referred to in section 1 of this chapter need not be procured.

(b) Under authority of this section, it is the duty of the board of election commissioners of each county to prepare ballots for each political party upon which the question of whether or not candidates for governor and lieutenant governor of such political party shall be elected by direct nomination of the electors of such party, shall be submitted to the qualified enrolled electors thereof, regardless of whether there are any other propositions to be submitted.

(c) A majority of the enrolled voters of any political party voting upon the question of direct nomination of candidates for any office must vote in favor of the proposition to authorize such political party to nominate its candidates by direct vote.

(d) If a majority of the qualified enrolled electors of each political party voting thereon, shall vote favorably, this method of selecting candidates for governor and lieutenant governor of each political party shall prevail until each political party shall have the matter resubmitted and decided by a majority of the qualified voters voting thereon at the time indicated in section 1 of chapter I.

(e) It is necessary for any candidate for governor or lieutenant governor of any political party to receive a plurality

and at least forty per cent of the votes cast by his party for the offices named (and not a plurality and forty per cent of the votes cast upon the question of direct nomination) to be entitled to the nomination of said party for office to be voted for at the next ensuing general November election.

(f) The provision that candidates must receive a plurality and at least forty per cent of the votes cast by his party to be the nominee of his party at the general election, refers only to candidates for governor and lieutenant governor.

Applies only to governor and lieutenant governor.

(g) Candidates for governor and lieutenant governor are the only candidates for State offices to which this act applies.

SEC. 6. (a) In addition to voting on the proposition of direct nomination of candidates for governor and lieutenant governor, all qualified enrolled electors of all political parties are required to vote for candidates for governor and lieutenant governor on the second Tuesday in June, 1906.

Candidates for governor, etc., to be voted on, in June, 1906.

(b) If the proposition of direct nomination fails to carry throughout the State at such primary election, regardless of the number of votes any candidate may receive, the party candidate for such office must be nominated in the same manner provided for, prior to the passage of this act.

Nomination, in case direct nomination fails to carry.

(c) If the question of the direct nomination of candidates prevails in any political party, unless a candidate receives a plurality and at least forty per cent of the votes cast by his party at said primary election for said offices, such political party shall nominate its candidates for governor and lieutenant governor in the manner in force prior to the passage of this act.

In case candidate fails to receive plurality and forty per cent.

(d) It is necessary for candidates for governor and lieutenant governor of the respective political parties during the year 1906 and thereafter to secure nomination papers, signed by the requisite number of qualified electors in the manner provided in section 2 of chapter V.

Nomination papers, candidates for governor, etc., to secure.

(e) Such nomination papers must be filed with the secretary of State. (See section 2, chapter V.)

Where filed.

(f) There will be a compliance with the statute if the secretary of state receives such nomination papers up to four o'clock in the afternoon of the fifteenth day before the primary election, held on the second Tuesday of June, 1906.

Nomination papers, time limited for receiving.

(g) The ballots for use of voters voting for candidates for governor and lieutenant governor shall be prepared by the board of election commissioners of the respective counties in the same manner provided for the preparation of ballots generally.

Ballots, by whom prepared.

(h) The proposition of the direct nomination of candidates for governor and lieutenant governor for the different political parties should be submitted upon different ballots from those upon which the names of candidates for such political party shall appear. (See (i).)

Question of direct nomination and names of candidates for different parties submitted upon different ballots.

For same
political party
submitted
upon same
ballots.

(i) The proposition of direct nomination of candidates for governor and lieutenant governor; of candidates for the different district offices; of candidates for county offices and candidates for city offices by each political party, may be printed upon the same ballot. (See section 4, chapter III.)

CHAPTER IV.

ELECTION OF DELEGATES TO COUNTY CONVENTIONS TO BE CALLED FOR THE PURPOSE OF SELECTING DELEGATES TO STATE CONVENTIONS TO NOMINATE STATE OFFICERS TO BE VOTED FOR AT THE NOVEMBER ELECTION.

County conventions,
chapter applies to.

SECTION 1. This chapter provides for the election of delegates to county conventions to be called for the purpose of selecting delegates to attend State conventions to select candidates for State offices to be voted for by the respective political parties at the general November election. It repeals all existing laws as to the manner of electing delegates to attend county conventions to select delegates to State conventions called for the above purpose. It applies to all political parties.

Laws
repealed.

Ballots, by
whom prepared.

SEC. 2. (a) The board of election commissioners of each county shall prepare the necessary ballots for the use of all parties.

What to
contain.

(b) The ballots to be used by the different electors of the respective political parties and upon which shall be written the names of the delegates voted for, ought not contain any other proposition.

Number of
delegates,
when, by and
to whom
certified.

(c) Great care should be taken by the chairman of the county committee of the respective political parties to correctly certify to the board of election commissioners of his county, at least ten days before the holding of such primary election, the number of delegates to which each election district is entitled.

Ballots, when
not counted.

(d) Care should also be taken by the board of election commissioners to have the same number of lines printed upon the ballots as there are delegates to be elected. If there are more persons voted for than there are delegates to be elected, the ballot cannot be counted. (See section 10, chapter V.)

Slips and
pasters, use of.

(e) We are not aware of any provision in the act which prohibits the use of printed slips and pasters in voting for party delegates to county conventions.

County conventions of
any one political party held
on same day.

SEC. 6. (a) The county conventions of any one political party called for the purpose of electing delegates to the State convention called for the purpose of nominating candidates for State offices to be voted for at the November election, must be held on the same day throughout the State, the day to be designated by the State central committee of each political party, and the place to be designated by a county committee.

Who to
designate.

(b) Under authority of this section there seems no reason why more than one political party may not hold a county convention on the same day, and for that matter in the same city or village. All parties may hold, on same day.

SEC. 7. The State convention of all political parties must be held within sixty days after the second Tuesday in June preceding any general November election, the particular day to be designated by the State central committee of the respective political parties. State convention, when held.

CHAPTER V.

THE NOMINATION OF CANDIDATES.

SECTION 1. (a) After the electors of any political party or parties in any city, county or district have decided in favor of direct nomination of candidates for office, such party candidates can be nominated only by direct vote of the qualified enrolled electors of said party at a primary election to be held on the first Tuesday in September in the year 1906, and every second year thereafter. (See section 5, chapter III, relative to candidates for State offices.) September primaries for county, etc., nominations.

(b) The candidate for any city, county or district office, who receives the greatest number of votes on his party ballot, shall be the nominee of the party for the ensuing election. Plurality for nomination.

SEC. 2. (a) The nomination papers of a candidate for a city office must be signed by a number of qualified electors, who are enrolled in the particular party enrollment and reside in the city, equal to two per cent of the number of votes cast in such city by his party for governor at the last preceding November election. Signatures necessary for city candidates.

(b) The nomination papers of a candidate for a county office must be signed by a number of qualified electors, who are enrolled in the party enrollment of said party and who reside in the county, equal to at least two per cent of the number of votes cast by his party in such county for governor at the last preceding November election. County candidate.

(c) The nomination papers of a candidate for a district office in any district comprising less than one county, must be signed by a number of qualified electors, who reside in such district and are enrolled in the party enrollment of said party, equal to at least two per cent of the number of votes that such party cast in said district for governor at the last preceding November election. District candidates, comprising less than one county.

(d) Nomination papers of a candidate for any office in a district, which district comprises more than one county, shall be filed with the clerk of each county and signed by a number of qualified electors residing in such county, who are enrolled in the party enrollment of said party, equal to at least two per cent of the number of votes cast by that particular party in such county for governor at the last preceding election. District candidates comprising more than one county.

Illustration.

To illustrate: If a district is comprised of four counties and a portion of a fifth, it will be necessary for a person who desires his name to be printed upon his party ticket as a candidate for an office in such district, to secure upon his nomination papers a number of names of enrolled electors in each county equal to two per cent of the number of votes cast by his party for governor in that county at the last preceding November election, and file same with the respective county clerk. This method must be followed in each of the counties. However, in the fifth county in the above illustration, two per cent of the vote cast by his party for governor at the preceding November election, in that portion of the county included in the particular district is all that will be required.

County clerks to certify to election boards on receipt of nomination papers.

In order that the act in this particular may be operative, the county clerk of any county constituting a portion of any district should, as soon as he receives the nomination papers, of any candidate for any district office, immediately certify to the election commissioners of each of the other counties included in such district, the names of all such candidates as shall have complied with the provisions of this act. Unless this rule is followed by the respective county clerks in such districts, the different boards of election commissioners which are required to have the names of candidates printed upon the respective party tickets, will have no means of ascertaining the names of candidates for district offices in districts comprised of more than one county.

Signatures necessary for governor and lieutenant governor.

(e) The nomination papers of a candidate for a State office (governor and lieutenant governor only) shall be signed by a number of qualified electors enrolled in the party enrollment of said party and residing anywhere in the State, equal to at least two per cent of the number of votes which that particular party cast for governor at the last preceding (November) election, and filed with the secretary of state.

Candidates of new parties.

(f) The nomination papers of candidates for offices in new parties shall be signed by a number of electors residing in such city, county or district, as the case may be (this undoubtedly includes a candidate for a State office, governor and lieutenant governor), equal in number to one per cent of the total vote cast for governor in such city, county or district (State) at the last preceding November election.

"Elector" how construed.

(g) The term "elector," as used in this section relative to nomination papers of candidates of new parties, may be construed to be an enrolled elector in any political party.

Elector to sign but one nomination paper, exception.

(h) No person may sign more than one nomination paper for the same office, unless there is more than one person to be elected to the same office.

When previous law to govern.

(i) Any party which does not come within the terms of this act is governed by the law in force prior to its passage. (See last proviso, section 13, chapter V.)

Forms of nomination papers.

(j) The respective clerks shall have printed and keep on hand blank forms of nomination papers which should be printed in substantially the following form,—

"Each signer of said nomination papers shall sign but one such paper for the same office, except where there are two or more to be nominated and elected to the same office, when he may sign as many papers as there are persons to be elected to such office. He shall therein declare that he intends to support the candidate named therein, adding his residence, with the street and number, if any, and the date of signing, and this paragraph shall be printed in full at the top of each nomination paper."

To the
(Secretary of State, or County Clerk or City Clerk.)

We, the undersigned, qualified electors of the.....

.....
(Insert No. of Precinct, Ward and City or Township.)

county of and State of Michigan,
and enrolled members of the party
hereby nominate who resides at
..... in the county

.....
(Insert City and Street number, or Township)

of as a candidate of the
party for the office of to be voted for at
the primary election to be held on the day of
..... as representing the principles of said
party, and we further declare we intend to support the candi-
date herein named.

NAME.	RESIDENCE.	ST. NO. (IN CITIES.)	DATE OF SIGNING.

SEC. 3. (a) The secretary of state is not mentioned in this section, but it was undoubtedly the intent of the legislature that he should perform similar duties to those imposed upon the respective clerks named therein.

Secretary of
State, duties
of.

(b) It is the duty of the respective clerks (and secretary of state) under this section to *certify to the proper board of election commissioners the names of all candidates mentioned in said nomination papers, together with the name of the party and the office stated.* Thus the respective clerks (and secretary of state) are given authority to certify only the names of such candidates as have complied with the provisions of the act. In those instances in which a candidate fails to secure the names of the necessary number of electors, or if for any other reason, there is not a compliance with the provisions of the act, although it is not expressly required, it would seem

Clerks and
secretary of
state to certify
names to elec-
tion commis-
sioners.

